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A number of the laws and orders in council considered by the authors are set out in appendices to their volume. All are given in the *Manual of Emergency Legislation*, which, although only covering the period up to October, makes a sizable book. Supplements are now issued at intervals, and Mr. Pulling has prepared a careful check list of the great variety of subjects considered. The regulations furnish an excellent index of the abnormality of war and the dislocation that it causes in many fields. The method of enactment, by the executive under broad grants of power from Parliament, is a marked departure from the Anglo-Saxon ideal, generally asserted but not always conveniently adhered to, that the legislature should act as definitively as possible, particularly in criminal matters. As Professor Morgan says of the defence of the realm regulations, "they are the most remarkable example of delegated legislation that this country has yet witnessed."

LINDSAY ROGERS.

Les Principes Généraux du Droit Administratif. Deuxième édition. By GASTON JÈZE. (Paris: Giard et Brière. 1914. Pp. xlvii, 542.)

The first edition of this work appeared in 1904. The present edition is largely a new treatise, its size having grown from a volume of 167 pages to one of 542 pages. It differs from the conventional treatise on the French *Droit Administratif* in that it does not deal with the constitution of the administrative system or with the general principles of administrative organization. A knowledge of these matters is assumed by the author. It contains no description of any organ, court or institution of the state, department or commune. It is mainly a study of the juridical principles which dominate the institutions of French administrative law and is based largely on the decisions of the court of cassation, the council of state and the tribunal of conflicts. It contains copious footnotes and citations of cases in which the texts of essential passages are quoted in illustration of the principles discussed. The work bears the usual evidences of wide research and learning which characterize the numerous writings of the distinguished author and altogether it is one of the most substantial contributions to the literature of French administrative law that has been made. All students of the subject will welcome the announcement of the author that "more volumes are to follow."

Three great ideas, we are told, dominated French administrative law

at the end of the nineteenth century: (1) the distinction between acts of authority and acts of management (*actes de gestion*); (2) the irresponsibility of the state when acting in its sovereign capacity or performing acts of public power and (3) the independence of the administration as over against not only the judicial courts but even the administrative courts. The first and third of these principles, which were mainly the result of historical and political conditions prevailing at the end of the eighteenth and at the beginning of the nineteenth centuries were at the beginning of the present century, the author says, in absolute contradiction with existing political economic and social conditions and it is to the honor of the council of state that it realized this fact and repudiated those dogmas. The theory of the distinction between acts of authority and acts of management has virtually been abandoned and the dogma of the irresponsibility of the state is in its last convulsions. The third principle: the independence of the administration of judicial control, is now in process of demolition at the hands of the council of state. This "secular superstition," M. Jèze maintains, entirely explicable under the monarchical and imperial systems, is too much out of harmony with the democratic regime of the reign of law to last very much longer and he shows how by its decisions the council of state is fast throwing it overboard.

Starting out with some brief observations on the nature of French administrative law in general, in the course of which he refers to the well known strictures of Dicey whose early misunderstanding and prejudice M. Jèze has done much to remove (see Dicey's preface to the last edition of his *Law of the Constitution*), the author passes to a consideration of what he calls "juridical technique:" its general notions, juridical powers, acts and situations, the force of the *chose jugée*, judicial control of legislative and administrative acts, etc. In books II and III he considers at length the notion of the public service, which he characterizes as the corner stone of French administrative law and the new conception of which has brought about the remodeling of all the institutions of the administrative law. Special attention is given to a consideration of the juridical nature of the public service, the legal character of the official relation, the legal distinction between the various categories of public officers and employees, the problem of the functionaries, with some observations on their excessive number and the need of reduction, etc. Much of the discussion of these matters is highly technical and therefore of no special interest to American students. His treatment of the subject of judicial control of legislative and administrative acts (Chap.

VIII) is probably the most interesting part of his treatise, at least to Americans. As a starting point for a discussion of this subject M. Jèze lays down the proposition that a good political and administrative organization must be subject to judicial control—that is, the individual must be allowed judicial recourse for excess of power against every act of the governing authorities whether they be legislators or executive agents.

Political control through responsible ministers is no longer regarded as sufficient. Among other reasons, it is too unwieldy; a vote of censure by parliament may be ineffective and the overthrow of a ministry is likely to be so far out of proportion to the fault that the dominant party cannot be expected to resort to so heroic a remedy. Judicial control alone can compel respect for the law and safeguard the rights of the individual. Important progress has been made in France toward the establishment of this form of control and the signs indicate a still further advance in the near future. As regards legislative acts, properly speaking, however, the right of judicial control is not yet admitted, at least not by the courts. No tribunal will presume to question the constitutionality of any act of parliament provided it has been enacted in accordance with the mode of procedure prescribed by the constitution and duly promulgated by the president. The principle of the separation of powers proclaimed at the time of the revolution still subsists, notwithstanding the fact that the particular conditions which led to its introduction have long since disappeared. The reason which moved the revolutionists to deprive the courts of their control over legislation was the memory of the opposition of the old *parlements* to the legislative reforms of Colbert, Necker, and Malesherbes and the fear that the judges of 1790 were out of sympathy with the ideas of the revolution.

To insure the success of the revolution it was therefore deemed necessary to free the legislature from every form of judicial interference. But today the republic is safely established and the French judges are fully imbued with Republican ideas. The old danger from the judiciary, therefore, no longer exists and it should be made the guardian of the constitution. The argument that a law passed by parliament is an act of sovereignty and cannot therefore be subjected to judicial control M. Jèze successfully riddles. There is nothing in the juridical nature of an act of parliament which differentiates it from an executive ordinance (*règlement*). Yet the latter are subject to judicial control and are in practice frequently nullified by the courts. The fact that they have a different authorship does not make them materially or intrinsically

different from legislative acts. Moreover, the court of cassation claims and exercises the right to disregard an act of parliament which is *formally* invalid, i.e., one which has not been passed by both chambers by the required majority at a common session and which has not been properly promulgated by the president of the republic. This distinction is not sound in logic as M. Jèze points out. If the courts may properly hold the legislature to the observance of constitutional provisions relating to the formalities of legislation it is difficult to see why they may not with equal propriety compel the legislature to respect constitutional prescriptions relating to the material content of legislation.

As yet the courts have not admitted the right of recourse in annulment for excess power against decree—laws issued by the president in pursuance of a delegation by parliament for the government of the colonies but this doctrine, M. Jèze says, appears to be undergoing change. The president, he argues, is merely an administrative agent even when he exercises by delegation the power of legislation for the colonies and decrees of this kind like other executive *règlements* should be subject to judicial control.

As has been said, the courts freely exercise the power of control over executive *règlements*, but until 1845 the council of state did not allow it in the case of *règlements* issued by the chief of state. This was explained by the political position of the king or emperor. He was a *gouvernant* not a mere administrative agent and his acts being political rather than administrative in character were not subject to judicial control, but with the advent of the July monarchy and the change in the political position of the king the courts adopted a different view and since 1845 the council of state has freely admitted the right of recourse in annulment of his acts for excess of power.

Until 1907, however, a distinction was made between simple executive *règlements* and *règlements* of public administration, that is, ordinances issued by the president upon the advice of the council of state and upon invitation of the legislature. The former were subject to judicial control; the latter being assimilated to the condition of an act of parliament were not subject to recourse for excess of power. But step by step the council of state modified its views and in 1907 it definitely decided in favor of the right of recourse and this opinion has been many times since reaffirmed.

The council of state still refuses, however, to admit the right of recourse in annulment against certain political acts of the president, known

as "acts of government." It has always maintained that there is a distinction between simple administrative acts and important measures of a high political character which the government is obliged to resort to in time of war or grave emergency. The latter cannot be subjected to judicial control. But the council of state has greatly narrowed the old theory of *actes de gouvernement* which was once so much abused, and now the number of such acts recognized by the council of state is very small. One by one they have been brought under the control of the judiciary until at present the only acts of this kind which are still free from judicial control are those relating to a state of siege and certain acts in connection with the administration of foreign affairs, and even the power of the government in respect to these matters is much limited.

The evolution of French jurisprudence in the direction of a more complete judicial control over the acts of the government has been very gratifying to the French people and the liberal attitude of the council of state, in particular, has done much to increase the popular confidence in that tribunal and to give it a place in the public esteem, which no other court or institution in France enjoys.

JAMES W. GARNER.

The Philosophy of Law. By JOSEF KOHLER. (Boston: The Boston Book Company. 1914. Pp. xlv, 390.)

What one finds in this book is, we believe, the sort of tonic that American legal thought needs. The prevailing philosophy of law in this country—for the lawyer has a philosophy, even though he be unconscious of its possession—is the eighteenth century conception of the existing legal system as something applicable to all peoples and to all conditions, something unchanging and unchangeable. Kohler, whatever be his merits or defects as a legal philosopher, is at least the implacable foe of any such notion of the nature of law, and he assaults this theory with true Teutonic vigor. Unquestionably the greatest living jurist in Germany, he is best known as a master in the field of comparative jurisprudence. This point of view leads him in the present work to emphasize the ceaseless struggle in law, the conflict between logical and illogical elements, between ideas of individual right on the one side and ideas of the social mission of law on the other. It may be that this philosophy does not, as Berolzheimer protests, contain a principle fruitful in positive application, but, upon the critical side, it is most useful.